HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. A.O. 380 of 2002

Mohammad Shami (Appellant)

Vs.

Motor accident Claim Tribunal and others.
(Respondents)

Approved for reporting. ✓

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~~Not approved for reporting~~

Date of decision 31.7.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 380 of 2002

Mohammad Shami ..... Appellant

Versus

Motor Accident Claim Tribunal & another.... Respondents

Sri Sanjay Kaushik, Advocate for the petitioner
Sri Naresh Pant, Advocate for respondents

Dated: 31.7.2004

Hon. Rajesh Tandon, J.

This is an appeal against the judgment and award dated 3.10.2002 passed by the Motor Accident Claims Tribunal Champawat.

Briefly stated the facts giving rise to the present appeal are that the appellant filed a petition under section 166A of Motor Vehicle Act for grant of compensation on account of injuries sustained by the petitioner in a motor vehicle accident.

The petitioner has stated that on 28.12.1999, the petitioner was riding on a scooter and was going to Radio Station, Champawat. When he reached near Laluwa Pani, a Jeep No. UP 29/3316 which was coming from opposite direction and was being driven rashly and negligently by its driver and hit the scooter on its front side due to which

petitioner and pillion rider Bishan Singh Adhikari sustained injuries. The petitioner has submitted that that he got treatment from Gokhaley Nursing Home, Pilibhit from 28.12.1999 to 11.1.2000 and incurred expenses of Rs. 60,000/-. He claimed a compensation of Rs.Two Lakhs.

Respondents have contested the petition and have filed their respective written statements. They admitted the accident and injuries sustained by the petitioner in the accident. However, they have denied the rash and negligent driving by the driver of the Jeep.

On the pleadings of the parties the Claims Tribunal framed as many as seven issues.

The learned Tribunal has decided issue no.1 in favour of the petitioner and has held that the accident had taken place due to rash and negligent driving by the petitioner himself. The Claims Tribunal has also held that the Insurance Company has failed to establish that the Jeep driver had not a valid driving licence.

However, the Claims Tribunal has held that the Jeep in question was insured with opposite party no.2 and the accident had taken place due to contributory negligence of the scooter rider (petitioner), hence he is not entitled to get any compensation. The claims Tribunal accordingly dismissed the claim petition vide judgment and award dated 3.10.2002. Being aggrieved the petitioner has filed the present appeal.

I have heard the learned counsel for the parties and have perused the entire evidence on record.

The main contention of the appellant is that the learned Tribunal has not properly evaluated the evidence on record and

has erred in law by holding that the accident took place due to the contributory negligence of the petitioner scooter rider.

To prove his case the petitioner has filed copy of the written report submitted by him in the Police Station, Lohaghat, Ex-ray reports, discharge certificate from Gokhaley Nursing Home, Pilibhit, and Cash memos of medicines and photographs of the scene of occurrence.

The claims tribunal has held that the driver of the Jeep was not driving the jeep rashly and negligently rather the petitioner was himself rash and negligent in driving the scooter. The appellant has challenged the findings of the Claims Tribunal regarding rash and negligent driving.

The petitioner has examined himself as P.W.1. He stated on oath that he was driving the scooter with a moderate speed and cautiously but the Jeep driver was negligent and he hit the scooter by driving the jeep on wrong side. Opposite parties have examined D.W.1 Jaya Dutt who was driving the Jeep at the time of accident. He has stated on oath that on 28.12.1999 he was going to Champawat from Laluwa Pani, when he reached near Tehsil a scooter hit right front wheel of the jeep due to which scooter rider and pillion rider have sustained injuries. This witness has stated that he was going down side while the scooter was coming up side of the road. It is general rule of traffic in the hills that the vehicle coming upside should be given way. D.W.1 Jeep Driver has admitted that the scooter collided with the right front wheel of the jeep, which clearly indicate that the scooter was going on its correct side but the jeep was being driven on wrong side. It was the duty of the jeep driver to give way to the scooter which was coming upside on the hill road and as such the Jeep driver was negligent in

driving the Jeep at the time of accident and as such the findings arrived at by the Claims Tribunal on this point cannot be sustained. I, therefore, hold that the accident took place due to rash and negligent driving of the Jeep driver.

The facts that the jeep driver was having valid driving licence and that the jeep was validly insured with the United India Insurance Co. Ltd. have been admitted by parties an as such the insurance company is liable to pay compensation to the petitioner.

The petitioner P.W.1 has stated on oath that his leg was fractured in the accident. He rushed to Gokhaley Nursing Home, Piliphit where he got treatment of his injuries. He has filed cash memos of medicines and hospital bills. He has stated that he incurred a sum of Rs.60,000/- in his treatment. He has stated on oath that his leg was so badly fractured that nailing was done in his leg and still he cannot do his work. The petitioner was a motor mechanic and physical fitness is essential requirement of his profession. Thus the injury sustained by him in the accident will affect the future prospect of the petitioner. Petitioner had gone to Pilibhit for his treatment and he should have incurred some money toward conveyance of which he is also entitled to get by way of compensation. Thus in my opinion a lump sum amount of Rs.1,00,000/- on all counts as compensation would meet the ends of justice. As the vehicle was insured with United India Insurance Co. Ltd. respondent no.3, therefore, the insurance company is liable to satisfy the amount of compensation.

The appeal is allowed. The appellant is awarded a sum of Rs.1,00,000/- (Rs.one lakh only) as compensation against the United India Insurance Company Ltd. respondent no.3. No

order as to costs.

Let a copy of this order be sent to the M.A.C.T. concerned for compliance.

(Rajesh Tandon, J.)

31.7.2004

*Dhyani